

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

MAY 28 2004

Michael N. Milby, Clerk of Court

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL-1446

This Document Relates To:

MARK NEWBY, *et al.*, Individually and
On Behalf of All Others Similarly Situated,

Plaintiffs,

CIVIL ACTION NO. H-01-3624
(Consolidated)

ENRON CORP., *et al.*,

Defendants.

**ORDER ON BANK DEFENDANTS' MOTION AND
MEMORANDUM OF LAW FOR MODIFICATION OF
THE SCHEDULING ORDER**

Pending before the Court is the Bank Defendants' Motion and Memorandum of Law for Modification of the Scheduling Order (Instrument No. 2147). In this motion the Bank Defendants ask the Court to modify the Scheduling Order of March 11, 2004 to adjourn by 90 days the commencement of fact depositions, currently set for June 2, 2004. The Bank Defendants asked for an expedited ruling on this motion, and the Court has received and considered numerous responses and replies.

Both the Scheduling Order and the Deposition Protocol Order provide that depositions are to begin by June 2, 2004 and end by November 30, 2005. There is no dispute that the Scheduling Order and the Deposition Protocol Order were the subject of months of negotiation and compromise by all parties. The Deposition Protocol Order governs, with some exceptions, all oral depositions of fact witnesses and states that absent agreement among the deposition scheduling committees, once a deposition

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is scheduled it is not to be postponed without "good cause." The parties have scheduled June depositions, have chosen July deponents, and the time has been allotted to each witness through negotiation.

The Bank Defendants are seeking a postponement of 90 days for the commencement of depositions and of the entire scheduling order because through no fault of their own, they have been prevented from reviewing sets of documents from Enron Corp and Arthur Andersen. Without these documents the Bank Defendants argue they cannot properly prepare for the upcoming depositions. In their response to the Bank Defendants' motion plaintiffs American National, et al. and Westboro Properties, et al. point out that the depositions scheduled for June through August 2004 are of fact witnesses who will be examined only on matters within their personal knowledge. The Bank Defendants' motion does not explain why the Bank Defendants need the unexamined Enron Corp or Arthur Andersen documents in order to prepare to depose these June through August witnesses. (Instrument 2153, at 3) This response further points out that if the Bank Defendants are surprised "that not every Enron and Arthur Andersen document will be available by June 1, 2004. . . . they are the only ones. The sheer magnitude of the production virtually guaranteed that the document production and preparation would not be completed by June 1." (*Id.*)

The Bank Defendants point out that the Deposition Protocol Order, at paragraph X.D states as a fundamental principle that witnesses should be deposed only once. Without all the unexamined documents the Bank Defendants argue that the parties will be forced to request to re-depose defendants. The Bank Defendants also argue that the documents in the case are not fungible and that the fact that they have access to 58 million pages of Enron Corp documents does not mean that the 19 million pages of Enron Corp documents, in addition to the Arthur Andersen documents, to which they do not have access, are unnecessary to deposition preparation. (Instrument No. 2164, at 3).

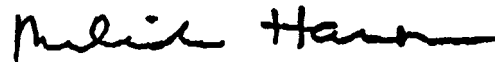
Of course the documents are not fungible, and of course the inability to access the large number of unavailable documents may result in inadequate deposition preparation that may lead to the

reopening of certain depositions. This does not mean, however, that the Bank Defendants are entirely prevented from deposition preparation. Lead Plaintiff points out in its response that it too has been forced to utilize only the 58 million pages of Enron Corp documents to prepare for depositions, together with "the Andersen work papers on Enron audits, plus the Examiner's four reports and voluminous exhibits." (Instrument No. 2151, at 2-3).

This case simply must stay on schedule. There will undoubtedly be more fits and starts in the discovery process, but the primary goal of all parties must be to stay on schedule. A great deal of time, energy, talent, and effort have been devoted to the schedule we have. The reasons given by the Bank Defendants in their Motion for Modification of the Scheduling Order are insufficient to modify that schedule now.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that Bank Defendants' Motion and Memorandum of Law for Modification of the Scheduling Order is hereby DENIED.

SIGNED at Houston, Texas, this 28th day of May, 2004.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE